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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,436	09/08/2003	Larry R. Gordon	632-P-3	4717
7590	03/10/2005			EXAMINER
TOD R. NISSE, P.C. P.O. Box 55630 Phoenix, AZ 85078			BUSHY, CHARLES S	
			ART UNIT	PAPER NUMBER
			1724	

DATE MAILED: 03/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/658,436	GORDON ET AL
	Examiner Scott Bushey	Art Unit 1724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 18 January 2005.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 2-6 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 2-6 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____.

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: On page 1, line 18, "4,693,853" should apparently be replaced by --4,693,852--.

Appropriate correction is required.

2. With respect to the amendments made to the specification at page 1, line 18, and at page 30, line 21 in the amendment filed January 18, 2005, such amendments have not been entered as they were not made in compliance with 37 CFR 1.121 (b) Specification, which states, "Amendments to the specification, ... must be made by adding, deleting or replacing a paragraph, by replacing a section, or by a substitute specification, in the manner specified in this section."

Claim Objections

3. Claim 5 is objected to because of the following informalities: On line 3 of claim 5, "houses" should be replaced by --housing--. Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(f) he did not himself invent the subject matter sought to be patented.

(g)(1) during the course of an interference conducted under section 135 or section 291, another inventor involved therein establishes, to the extent permitted in section 104, that before such person's invention thereof the invention was made by such other inventor and not abandoned, suppressed, or concealed, or (2) before such person's invention thereof, the invention was made in this country by another inventor who had not abandoned, suppressed, or concealed it. In determining priority of invention under this subsection, there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable

diligence of one who was first to conceive and last to reduce to practice, from a time prior to conception by the other.

5. Claims 2, 4 and 5 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Gordon '852 (Figs. 1-3; col. 4, lines 10-12, 18-19, 37-44, 52).

The apparatus as recited by instant claim 2 does not differentiate the invention from the apparatus as disclosed by the reference, especially by the portions cited above. It should be noted that instant claim 2 does not require the air flow to exit the housing tangentially, as suggested by applicant's specification. Furthermore, the air flow from the reference apparatus is clearly disclosed as expanding along a helical path, which path proceeds outwardly radially beyond the arcuate surface of the lip of the bottom of the apparatus. With respect to the recitation by instant claim 4, that the air traveling over the arcuate surface travels over points along a line, the claim does not require either a straight or curved line, and thus is sufficiently broad to encompass that as disclosed by the reference. Lastly, with respect to instant claim 5, the reference clearly teaches at col. 4, lines 10-12, section (a) of claim 5; and the combination of the disclosure of col. 4, lines 37-44, and Figs. 2 and 3 of the reference clearly teach sections (b) and (c) of claim 5.

6. Claims 2, 4 and 5 are rejected under 35 U.S.C. 102(f) because the applicant did not invent the claimed subject matter. The instant application names three co-inventors, which absent an unexpected showing would indicate that the three applicants of the current application are all inventors responsible for the subject matter recited by instant claims 2, 4, and 5. However, U.S. Patent No. 4,693,852, which names only Larry R. Gordon as the sole inventor clearly anticipates the invention as recited by instant claims 2, 4 and 5 by the disclosure of Figures 1-3; col. 4, lines 10-12, 18-19, 37-44, 52 of the reference.

7. Claims 2, 4 and 5 are rejected under 35 U.S.C. 102(g) as being clearly anticipated by Gordon '852 (Fig. 1-3; col. 4, lines 10-12, 18-19, 37-44, 52). Please note the discussion in paragraph 6 above.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon '852. Gordon '852 (Figs. 1-3; col. 4, lines 10-12, 18-19, 37-44, 52) is considered to anticipate applicant's invention as set forth by instant claims 4 and 5, as set forth above. Gordon '852 substantially discloses applicant's invention as recited by instant claim 3, except for the specifically claimed range of length of the arcuate surface. Figure 1 of the reference clearly discloses an arcuate surface (above reference numeral 50) having the same shape and approximate size as recited by instant claim 3. It would have been obvious to an artisan at the

time of the invention, to modify the size of the housing and length of the arcuate surface of the known apparatus, to thereby optimize the operation of the device by way of routine experimentation, in view of the overall teaching of the reference. With respect to instant claims 4 and 5, even if applicant cannot agree that they are anticipated by Gordon '852 as set forth above, it would have been obvious to an artisan at the time of the invention, to modify the overall dimensions of the apparatus in a proportionally equivalent manner to allow for optimization of the operation of the device in various environments.

11. Claim 6 rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon '852 as applied to claim 2 above, and further in view of Terrell et al.

Gordon '852 substantially discloses applicant's invention as recited by instant claim 6, except for the grate on the inlet side of the housing to protect the fan blades.

Terrell et al (the unnumbered grate on the backside of the fan housing in Fig. 1) disclose an evaporative cooling unit similar to that of Gordon '852, which includes a protective grate on the inlet side of the fan housing. It would have been obvious to an artisan at the time of the invention, to modify the Gordon '852 apparatus to include a protective grate, in view of Terrell et al, since such is common practice with the livestock cooling art, wherein the fan is protected from birds that routinely fly through livestock barns from entering the device and damaging the fan blades.

Response to Arguments

12. Applicant's arguments filed January 18, 2005 have been fully considered but they are not persuasive. Applicant's claims are sufficiently broad to read on the device as taught by Gordon '852. There are no structural limitations within applicant's claims which would indicate to one

having ordinary skill in the art that the claimed invention is different from that as disclosed and/or suggested by Gordon '852.

It is noted that applicant has not addressed either of the rejections under 102(f) or (g), as set forth in the previous Office action and set forth herein as applicable to new claims 2, 4, and 5.

13. Applicant's arguments with respect to claims 2-6 have been considered but are moot in view of the new grounds of rejection.

Conclusion

14. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Bushey whose telephone number is (571) 272-1153. The examiner can normally be reached on Monday-Thursday 6:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on (571) 272-1166. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Scott Bushey
Primary Examiner
Art Unit 1724

csb
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